

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.321 OF 2003

Somnath Bhaguji Tasker,
age 10, occ: Agril.,
r/o Rui, Tal.Niphad,
Dist. Nashik. Petitioner

- Versus -

1. The Special Land Acquisition
Officer, Uppar Godavari
Project, Nashik.
2. Executive Engineer,
Nandur Madhameshwar Express
Canal, Vaijapur Division,
Nashik.
3. The Collector, Nashik. Respondents

Sarvasri Kishor Patil with P.N. Joshi
for the Petitioner.

Shri S.N. Gawade, Asst. Government
Pleader, for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 25, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties.
Perused the records. Rule. By consent, the rule is
made returnable forthwith.

2. The petitioner challenges the order dated 10-10-2002
passed by the Land Acquisition Officer, Nashik,
rejecting the application filed by the petitioner under

Section 18 of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act" on the ground that the application was not filed within 42 days from the date of the notice under Section 12(2) of the said Act and secondly, that the compensation has been accepted without lodging protest.

3. The contention of the petitioner is that there was no notice received under Section 12(2) of the said Act and it was learnt by the petitioner from some other interested parties that the compensation for acquisition of the land was to be disbursed on 2-8-2002 and accordingly the petitioner approached the office of the Talathi and collected the compensation and thereafter filed the present application under Section 18 of the said Act on 12-9-2002, within a period of six weeks from the date of receipt of the compensation. In spite of the fact that the said fact was clearly disclosed in the application under Section 18, the authorities below rejected the said application without proper application of mind and without appreciating the contentions raised by the petitioner in the application. The learned A.G.P., on the other hand, submitted that in view of the fact that the compensation was received without protest and the application was not filed within 42 days from the date of the notice under Section 12(2), there is no case for interference in the impugned order.

4. Bare perusal of the impugned order nowhere discloses that the notice under Section 12(2) of the said Act was in fact served upon the petitioner. The period of six weeks, as contemplated under Section 18 for filing of the application for reference thereunder commences from the date of the receipt of such notice under Section 12(2) and not merely from the date of issuance of such notice. Once the petitioner had made it clear in his application that he had not received the notice under Section 12(2) and there was nothing before the authorities to reveal that such notice was in fact served upon the petitioner. Mere observation that the application has not been filed within 42 days from the date of the notice under Section 12(2) of the said Act cannot be a justification for rejection of the application under Section 18 filed by the petitioner.

5. As regards the absence of protest being lodged while accepting the compensation, it is not disclosed in the impugned order as to whether the protest was orally communicated to the concerned authorities while accepting the compensation. It has been clearly held by this Court in earlier decisions on the point in issue that mere absence of records with the authorities regarding the lodging of the protest by the interested parties is itself not sufficient to disentitle the party

to file an application for reference under Section 18. It is primarily the duty of the disbursing officer to ensure as to whether the interested party is lodging the protest or not and if the interested party is dissatisfied with the compensation awarded, then to make necessary endorsement in that regard in the records relating to disbursement of the compensation. The provision of law comprised under Section 18 nowhere prescribes any specific mode for recording of the protest at the time of acceptance of the compensation. Being so, it will be the duty of the disbursing officer to ascertain from the interested party collecting the compensation as to whether he is satisfied/dissatisfied with the compensation awarded which is being collected by such a party and accordingly make necessary endorsement in the records pertaining to the disbursement of the amount. Failure on the part of the concerned authorities cannot be a justification for rejection of the application of the interested party seeking reference under Section 18 of the said Act.

6. Being so, the impugned order cannot be sustained for the reasons stated above and is liable to be set aside and the respondent/Land Acquisition Officer is required to refer the application for reference to the Reference Court unless the authorities find the application to have been filed beyond the period of six weeks from the

date of receipt of the notice under Section 12(2) or from the date of receipt of the compensation by the petitioner. The petition, therefore, succeeds and the

rule is made absolute in above terms with no order as to costs.
